

Federal Communications Commission

DA 00-701

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-169
Table of Allotments,)	RM-9121
FM Broadcast Stations.)	RM-9170
(Coon Valley and Westby, Wisconsin)	
and Lanesboro, Minnesota)	

FCC MAIL SECTION
APR 3 1 42 PM '00
DIST. TO ALL FIELD

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 22, 2000

Released: March 31, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration of the Report and Order¹ in this proceeding filed by Sparta-Tomah Broadcasting Company, Inc. ("Sparta-Tomah"). Bluff Country Community Radio ("Bluff") has filed an Opposition to Sparta-Tomah's Petition for Reconsideration, and Sparta-Tomah has filed a Reply to Bluff's Opposition. For the reasons discussed below, we deny Sparta-Tomah's Petition for Reconsideration.

2. Background. The Notice of Proposed Rule Making ("Notice")² in this proceeding was issued in response to Sparta-Tomah's petition for rule making to allot Channel 280A to Coon Valley, Wisconsin, as that community's first local FM broadcast service. In response to the Notice, Bluff filed a counterproposal that requested the allotment of Channel 280A at both Westby, Wisconsin, and Lanesboro, Minnesota. Bluff also requested that both of these allotments be reserved for noncommercial educational use, although Bluff expressed its willingness to apply for both channels even if they are not reserved for educational use. Bluff stated that allotting Channel 280A at Coon Valley would provide a first local service to a community of 817 people, while allotting Channel 280A to both Lanesboro (population of 858) and Westby (population of 1,866) would provide first local services to communities with a combined population of over 2,700 people. Sparta-Tomah argued that both Westby, Wisconsin and Lanesboro, Minnesota have available separate noncommercial educational channels that can be used to provide service to both communities. Specifically, Sparta-Tomah claimed that Channel 203A is available for allotment at Lanesboro, Minnesota and Channel 207A is available for allotment at Westby, Wisconsin. In this light, Sparta-Tomah requested that Channel 280A be allotted to Coon Valley and that Bluff's proposed use of Channel 280A at Lanesboro and Westby be denied since noncommercial educational channels are available for use in those communities.

¹ 13 FCC Rcd 10240 (Allocations Br. 1998).

² 12 FCC Rcd 11383 (Allocations Br. 1997).

3. The Report and Order determined that Channel 280A was the only commercial channel that could be allotted to the communities of Coon Valley, Lanesboro, or Westby. The Report and Order also denied Bluff's request that Channel 280A be reserved for noncommercial use at both Lanesboro and Westby because Bluff had failed to make a showing supporting its request. The Report and Order also found that allotting Channel 207A at Westby and 203A at Lanesboro would result in short-spacings to existing allotments. Pursuant to priority (4) "other public interest factors" of the Commission's Revision of FM Assignment Policies and Procedures,³ we concluded that the public interest would best be served by allotting Channel 280A to both Lanesboro, Minnesota, and Westby, Wisconsin, since first local aural service would be provided to the most populous communities.

4. Petition for Reconsideration. In its Petition for Reconsideration, Sparta-Tomah submits an engineering study disputing the Report and Order's finding that the use of Channel 203A at Lanesboro and 207A at Westby would result in short-spacings to other authorized facilities. The petitioner claims that the study demonstrates that the use of Channels 203A and 207A at Lanesboro and Westby, respectively, would cause no prohibited overlap with any authorized facilities and are, therefore, available and in compliance with Section 73.509 of the Commission's Rules. Moreover, Sparta-Tomah asserts that Bluff has filed a construction permit application for a new radio station on reserved Channel 203A at Lanesboro and that the application (File No. BPED-980520MB) states that the proposed facilities comply with the Commission's Rules. Sparta-Tomah also alleges that the allotment of Channel 280A to Westby at the proposed reference coordinates would not provide a 70 dBu service to the entire community as required by Section 73.315 of the Rules and, therefore, that the allotment of Channel 280A to Westby must be rescinded. Sparta-Tomah argues that, at this point, the Commission must choose between the allotment of Channel 280A to Coon Valley, with Channel 203A being available at Lanesboro, or allotting Channel 280A to Lanesboro in addition to the likely use of Channel 203 there, leaving Coon Valley without a station.

5. Discussion: We affirm the Report and Order's allotment of Channel 280A to both Westby, Wisconsin, and Lanesboro, Minnesota. These allotments will provide first local services to the two larger communities over the smaller community and are in accord with the FM allotment priorities. We also affirm the Report and Order's finding that 70 dBu coverage of Westby would be provided from the designated reference site 13.2 kilometers east of Westby. Assuming maximum facilities for a Class A FM station and using our standard propagation methodology based upon the Commission's F(50,50) curves contained in Section 73.333 of the Rules, the 70 dBu signal of a Class A FM station will extend 16.2 kilometers and therefore, in this instance, encompass Westby. Although Sparta-Tomah states that Westby would not be adequately encompassed by a 70 dBu contour, the petitioner has not stated how or why our calculations might be in error. In light of these circumstances, we continue to believe that our calculations are correct.

³ 90 FCC 2d 88 (1982). The FM allotment priorities set forth in the foregoing document are: (1) First full-time aural service; (2) Second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).]

6. Finally, the fact that Bluff filed an application for a new noncommercial station on Channel 203A for Lanesboro does not warrant revisiting or setting aside the Report and Order. That application is mutually exclusive with two other applications and action on that group of mutually exclusive applications is being held in abeyance pending the conclusion of the rulemaking proceeding in MM Docket No. 95-31, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 13 FCC Rcd 21167 (1998). Thus, there is no assurance that Bluff's Channel 203A application will be ultimately granted. Further, the Channel 203A application was filed after the adoption date of the Report and Order in this proceeding and there was no basis to consider that application in the context of our resolution of this proceeding. Cf. Conflict Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part, 8 FCC Rcd 4743 (1993). Moreover, there is no Commission rule or policy prohibiting an applicant from filing for an educational FM station and a commercial FM station in the same community. Further, we note that it is quite possible that Bluff will not be the licensee for either Channel 280A at Lanesboro or Channel 203A at Lanesboro. It is also speculation to suggest that an application for a new noncommercial station in Westby on Channel 207 will ever be filed. In light of all the facts in this case, we affirm the allotments of Channel 280 to Lanesboro and Westby.

7. Accordingly, IT IS ORDERED That the Petition for Reconsideration filed by Sparta-Tomah Broadcasting Company, Inc. IS DENIED.

8. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau